

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

KARL F. THOMPSON, JR.,
Defendant.

No. CR-09-88-FVS

ORDER DENYING
RECONSIDERATION OF THE
"PRETRIAL ORDER RE
ADMISSIBILITY OF
INFORMATION THAT DID NOT
PLAY A ROLE IN THE
DEFENDANT'S DECISION-
MAKING PROCESS"

THIS MATTER came before the Court on September 29, 2011, and October 4, 2011, based upon the government's motion for reconsideration of an order excluding certain evidence concerning the alleged behavior of Otto Zehm.

BACKGROUND

During the Spring of 2010, the defendant moved to exclude evidence concerning the behavior of Otto Zehm of which he was unaware when he confronted Mr. Zehm; particularly evidence regarding some of Mr. Zehm's alleged behavior at an ATM. On June 18, 2010, the Court entered an order that is entitled "Pretrial Order Re Admissibility Of Information That Did Not Play A Role In The Defendant's Decision-Making Process." In essence, the Court granted the defendant's request. The government appealed. During oral argument, the government represented to the Ninth Circuit that the evidence in

1 question is not essential to prove its case beyond a reasonable doubt.
2 The Ninth Circuit affirmed the Court's ruling. On July 21, 2011, the
3 government asked this Court to reconsider. The defendant objects to
4 the government's request.

5 **RULING**

6 The Court has carefully reviewed the parties' memoranda and oral
7 arguments. Among other things, the Court has considered whether the
8 risk of unfair prejudice can be reduced to an acceptable level by
9 issuing a limiting instruction to the jury. Although the Court has
10 observed that jurors attempt to follow the instructions they receive,
11 there are limits to a juror's ability to compartmentalize evidence.
12 The evidence under discussion is of a type the average juror would
13 find difficult to compartmentalize. Furthermore, there is a dispute
14 as to what occurred at the ATM. The defendant would be entitled to
15 contest the government's version. This could lead to a trial within a
16 trial. For these reasons, and the reasons set forth in the Court's
17 order of June 18, 2010, the Court continues to adhere to its prior
18 ruling.

19 **IT IS HEREBY ORDERED:**

20 The government's motion for reconsideration (**ECF No. 508**) is
21 **denied.**

22 **IT IS SO ORDERED.** The District Court Executive is hereby
23 directed to enter this order and furnish copies to counsel.

24 **DATED** this 6th day of October, 2011.

25 s/ Fred Van Sickle
26 Fred Van Sickle
Senior United States District Judge